IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.2158 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**NO**
2	To be referred to the Reporter or not ?	**NO**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**NO**
5	Whether it is to be circulated to the civil judge ?	**NO**

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BHAGWATI VIDHYALAY - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR NIKHIL S KARIEL for TANNA ASSOCIATES for the Petitioner
MR SUNIT S SHAH, GP for Respondent(s) : 1,
MR HEMANG H PARIKH, AGP for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 03/12/2007
ORAL JUDGMENT

(1) Considering the scope of the controversy the petition is taken up for final hearing and disposal today. **RULE**. Learned advocates appearing for the respondents are directed to waive service.

(2) Though the petition has been filed praying for following reliefs,

"8. The petitioner in view of what has been submitted herein above most respectfully prays to your Lordships that:

(a) Be pleased to allow this writ petition.

(b) Be pleased to direct the respondent authorities to issue appropriate orders allotting new classes to the tune of one class for standard 8th, one class for standard 9th, one class for standard 10th, one class for standard 11th and two classes for standard 12th on grantable basis.

(c) Be pleased to direct the respondent authorities to release funds to the petitioner institution insofar as students of the erstwhile Janta School, who have already passed out from standard 12th are concerned and who have already pursued their studies in standard 8, 9, 10, 11 & 12 and now are either passed out or are in higher standards.

(d) Be pleased to direct the respondent authorities to issue appropriate orders, permitting the petitioner institution to recruit new teachers and staffs on prorata basis, based upon number of students of erstwhile Janta School admitted with the

petitioner institution.

(e) Be pleased to quash and set aside order dated 8/11/2006 on the ground that the same is arbitrary.

(f) Be pleased to grant exemplary cost.

(g) Any other and further relief as may be deemed fit by this Hon'ble Court in the interest of justice and equity."

the learned advocate for the petitioner has restricted the claim qua the students transferred and allotted by respondent No.3-The District Education Officer (DEO) from Janta Hindi/Gujarati Secondary/Higher Secondary School, Meghaninagar to the petitioner-school vide order dated 29.10.2005 (Annexure-A) for Standards 11 and 12 only.

(3) It is an accepted fact that vide order dated 29.10.2005 in so far as the petitioner-school is concerned, 27 students for Std. 11 and 61 students for Std. 12 stood transferred. On 23.11.2005 vide communication bearing reference No.99/05-06 the petitioner-school wrote to the DEO for sanctioning grant qua such transferred

students to Standards 11 and 12 from Janta High School. It is an accepted position between the parties that till 08.11.2006 the respondent authorities neither acknowledged the repeated applications moved by the petitioner nor conveyed any decision and it was only on 08.11.2006 (Annexure-P) that a decision was taken by the respondents that the petitioner-school cannot be sanctioned additional classes of Standards 11 and 12 on grantable basis as the petitioner was a non-grantable higher secondary school. This position obtained, despite the fact that the DEO had forwarded, vide communication dated 11.07.2006, the application of the petitioner to respondent No.2 authority.

(4) Though various submissions have been made in the affidavit-in-reply filed on behalf of the respondent authorities, at the time of hearing, the learned Government Pleader intervened and made a statement that to the extent the DEO had transferred and allotted students, who were

enjoying the grant facilities in Janta High School, the said students would be entitled to seek the same facility in the petitioner-school and, therefore, the petitioner-school was justified in making a restricted claim qua the students of Standards 11 and 12 of the erstwhile Janta High School who were transferred to the petitioner-school. That despite the impugned order the claim qua the aforesaid category of students would be entertained and the grant relatable to the said students would be released and paid to the petitioner-school within a period of 04 (four) weeks from today.

(5) At this stage, the learned advocate for the petitioner submits that all the students who were transferred from Janta High School, not only qua Standards 11 and 12, but also Standards 8, 9 and 10, who would in subsequent years enter Standards 11 and 12, even in relation to those students the petitioner would be entitled to grant as the petitioner

had not charged any fees for Standards 11 and 12. That those students have already passed out and the petitioner would restrict the claim of grant only qua those students. This submission is required to be recorded to be rejected. Once the students had come up after clearing Standards 8, 9 and 10 they cannot be treated to be students transferred to Standards 11 and 12 from the closed high school and hence, the petitioner cannot claim grant qua such students.

(6) In light of the statement made by the learned Government Pleader as recorded hereinbefore,it is not necessary to record any further contentions of the respective sides. The respondent authorities shall ensure that the petitioner-school is paid the grant amount relatable to the students of Standards 11 and 12, who were allotted by the DEO vide order dated 29.10.2005 (Annexure-A), and this would include the students of Standard 11 who progress to Standard 12 also. In other words,

in so far as 27 students are concerned, in relation to those students the petitioner-school would be entitled to grant both for Standards 11 and 12 while restricting the grant in relation to 61 students for Standard 12. The amount shall be paid by the respondent authorities within 04 (four) weeks from today.

(7) Before parting it is necessary to take note of the fact that the DEO, Ahmedabad City, who was in charge in November 2005, that is the relevant period, has not only been lax in his duties but has not bothered to deal with or respond to the claim made by the petitioner. The said gentleman could have very well turned down the claim made by the petitioner at the relevant point of time on the grounds which have been pressed into service on behalf of the respondent authorities for the first time in the affidavit-in-reply. In the circumstances, the burden which has been cast on the exchequer by virtue of the present

order would have merited recovery of the entire amount of grant from the said gentleman. However, that aspect of the matter is left up to the State Government. At this stage the learned Assistant Government Pleader has tendered unconditional apology for the conduct of the DEO concerned. After taking the same into consideration it is ordered that the costs of this petition shall be borne by the State Government in the first instance and recovered from the then DEO, Ahmedabad City, namely, Dr. Bharatbhai B. Pandit, as informed by the learned Assistant Government Pleader. The costs for this purposes are quantified at a sum of Rs.2,500/- (Rupees Two thousand Five hundred) which shall be paid by the respondents along with the amount of grant that shall be paid to the petitioner.

(8) The petition is allowed accordingly in the aforesaid terms. Rule made absolute to the aforesaid extent. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

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